

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

HOWARD STARKES, JR., : Civil Action No. 08-3630 (MLC)

Plaintiff, :

v. :

LT. CLANCEY, et al., :

Defendants. :
_____ :

O R D E R

Plaintiff submitted to the Clerk for filing a civil Complaint, which the Clerk received July 23, 2008, and it appearing that:

1. The Clerk will not file a civil complaint unless the person seeking relief either pays the entire applicable filing fee in advance or applies for and is granted in forma pauperis status pursuant to 28 U.S.C. § 1915. See Local Civil R. 5.1(f).

2. The filing fee for a civil complaint is \$350.00. See 28 U.S.C. § 1914(a).

3. A prisoner seeking permission to file a civil rights complaint in forma pauperis is required to file an affidavit of poverty **and** a prison account statement for the six-month period immediately preceding the filing of the complaint. See 28 U.S.C. § 1915(a)(2).

4. If the prisoner is granted permission to file the complaint in forma pauperis, then the Court is required to assess the \$350.00 filing fee against the prisoner and collect the fee

by directing the agency having custody of the prisoner to deduct installment payments from the prisoner's prison account equal to 20% of the preceding month's income credited to the account for each month that the balance of the account exceeds \$10.00. See 28 U.S.C. § 1915(b).

5. In addition, if the prisoner is granted permission to proceed in forma pauperis, then the Court is required to screen the complaint for dismissal and to dismiss any claim that is frivolous or malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief from an defendant who is immune from such relief.

6. If a prisoner has, on three or more occasions while incarcerated, brought an action or appeal in a federal court that was dismissed as frivolous or malicious, for failure to state a claim upon which relief may be granted, or for seeking monetary relief from immune defendants, then the prisoner may not bring another action in forma pauperis unless he or she is in imminent danger of serious physical injury. See 28 U.S.C. § 1915(g).

7. The above-named Plaintiff is a prisoner. He submitted an affidavit of poverty indicating that he has been incarcerated since December 20, 2007. But his application to proceed in forma pauperis is incomplete, because he did not submit a prison account statement for the six-month period immediately preceding the filing of the Complaint, as required by 28 U.S.C. § 1915(a)(2).

IT IS THEREFORE on this 6th day of October, 2008,

ORDERED that Plaintiff's application to proceed in forma pauperis is **DENIED WITHOUT PREJUDICE**; and it is further

ORDERED that the Clerk shall **ADMINISTRATIVELY TERMINATE** this action, without filing the Complaint or assessing a filing fee; and it is further

ORDERED that administrative termination is not a "dismissal" for purposes of the statute of limitations, and that if this case is reopened pursuant to the terms of this Order, it is not thereby subject to the statute of limitations bar, provided the original Complaint was timely. See Houston v. Lack, 487 U.S. 266 (1988); McDowell v. Del. State Police, 88 F.3d 188, 191 (3d Cir. 1996); Williams-Guice v. Board of Educ., 45 F.3d 161, 163 (7th Cir. 1995); and it is further

ORDERED that Plaintiff may have the above entitled case reopened if, within 30 days of the date of the entry of this Order, Plaintiff either pre-pays the \$350.00 filing fee **or** submits to the Clerk a six-month prison account statement, as required by 28 U.S.C. § 1915(a), or an explanation as to why he is unable to obtain the prison account statement for the relevant six-month period; and it is further

ORDERED that, if Plaintiff prepays the \$350.00 filing fee or files the required documents within 30 days of the date of the entry of this Order, then the Court will enter an order reopening

the file in order to screen the Complaint for dismissal; and it is further

ORDERED that the Clerk shall serve this Order upon Plaintiff by regular mail, and shall designate the file as **CLOSED**.

s/ Mary L. Cooper
MARY L. COOPER
United States District Judge